

1 EDMUND G. BROWN JR.
Attorney General of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
4 State Bar No. 101336
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-3037
7 Facsimile: (619) 645-2061
Attorneys for Complainant

8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. **2010-447**

12 **KIMBERLY RENEE ZEPEDA**
13 **21551 Brookhurst St., Apt. 178**
14 **Huntington Beach, CA 92646**

ACCUSATION

15 **Registered Nurse License No. 635144**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
22 of Consumer Affairs.

23 2. On or about March 26, 2004, the Board of Registered Nursing issued Registered
24 Nurse License Number 635144 to Kimberly Renee Zepeda (Respondent). The Registered Nurse
25 License was in full force and effect at all times relevant to the charges brought herein and will
26 expire on August 31, 2011, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b), an expired license may be renewed at any time within eight years after expiration.

STATUTORY PROVISIONS

6. Section 482 of the Code states:

"Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

"(a) Considering the denial of a license by the board under Section 480; or

"(b) Considering suspension or revocation of a license under Section 490.

"Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee."

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

"Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the

1 ground that the applicant or the licensee has been convicted of a crime substantially related to the
2 qualifications, functions, and duties of the licensee in question, the record of conviction of the
3 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
4 and the board may inquire into the circumstances surrounding the commission of the crime in
5 order to fix the degree of discipline or to determine if the conviction is substantially related to the
6 qualifications, functions, and duties of the licensee in question.

7 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
8 'registration.'"

9 9. Section 2761 of the Code states in pertinent part:

10 "The board may take disciplinary action against a certified or licensed nurse or deny an
11 application for a certificate or license for any of the following:

12 (a) Unprofessional conduct, which includes, but is not limited to, the following:

13 "....

14 (f) Conviction of a felony or of any offense substantially related to the qualifications,
15 functions, and duties of a registered nurse, in which event the record of the conviction shall be
16 conclusive evidence thereof."

17 "...."

18 10. Section 2762 of the Code states in pertinent part:

19 "In addition to other acts constituting unprofessional conduct within the meaning of this
20 chapter it is unprofessional conduct for a person licensed under this chapter to do any of the
21 following:

22 "....

23 "(b) Use any controlled substance as defined in Division 10 (commencing with Section
24 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in
25 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
26 himself or herself, any other person, or the public or to the extent that such use impairs his or her
27 ability to conduct with safety to the public the practice authorized by his or her license.

“(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof.”

REGULATIONS

11. California Code of Regulations, title 16, section 1444, states in pertinent part:

"A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

"(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

"(b) Failure to comply with any mandatory reporting requirements.

"(c) Theft, dishonesty, fraud, or deceit.

"(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code."

12. California Code of Regulations, title 16, section 1445 states in pertinent part:

66 . . .

“(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

“(1) Nature and severity of the act(s) or offense(s).

"(2) Total criminal record.

"(3) The time that has elapsed since commission of the act(s) or offense(s).

"(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

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1 “(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the
2 Penal Code.

3 “(6) Evidence, if any, of rehabilitation submitted by the licensee.”

4 **COST RECOVERY**

5 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
6 administrative law judge to direct a licensee found to have committed a violation or violations of
7 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
8 enforcement of the case.

9 **FIRST CAUSE FOR DISCIPLINE**

10 **(October 30, 2009 Conviction for DUI on September 22, 2009)**

11 14. Respondent is subject to disciplinary action under sections 490 and 2761,
12 subdivision (f), in that on October 30, 2009, in a criminal proceeding entitled *The People of the*
13 *State of California v. Kimberly Renee Zepeda aka Kimberly Renee Barrette* in Orange County
14 Superior Court, Case Number 09HM08153, Respondent was convicted by her plea of guilty to
15 violating Vehicle Code section 23152, subdivision (a), driving while under the influence of
16 alcohol, a misdemeanor, a crime substantially related to the qualifications, functions, and duties
17 of a registered nurse. The circumstances are as follows:

18 a. On September 22, 2009, Respondent was seen by a Costa Mesa Police Department
19 Sergeant driving westbound on W. 19th Street with two flat tires on the right side. He made a
20 traffic stop on the vehicle. Respondent told the Sergeant that her son called her on her cell phone
21 and she answered the phone, but as she picked up the phone, she was distracted and veered off the
22 roadway. Respondent said she hit a curb on 17th Street just before Placentia Avenue. She
23 continued to drive because she did not realize both right side tires on her vehicle were completely
24 flat. Respondent stated she was driving about 30 miles per hour when she struck the curb. The
25 officer evaluated Respondent for DUI and subsequently arrested her.

26 b. On October 30, 2009, Respondent's plea was accepted by the court and she was
27 sentenced to three years informal probation, and ordered to violate no law, pay various fines and
28 fees, complete 49 hours of community service in lieu of fine is consecutive to 80 hours of

1 community services as directed by Volunteer Center for a total of 129 hours community service,
2 not to drive without a valid driver's license in her possession, not to drive without proof of valid
3 auto liability insurance or financial responsibility as required by law, not to drive a motor vehicle
4 with a measurable amount of alcohol or drugs in blood, submit to a chemical test of blood, breath,
5 or urine on demand by any peace officer or probation office, attend a 9 month Level 2 First
6 Offender Alcohol Program, serve 2 days in Orange County jail with 2 days credit for time served,
7 pay \$280 booking fee to Costa Mesa Police Department, and pay restitution in the amount to be
8 determined and directed by Victim Witness.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Using Alcohol to an Extent Dangerous to Self and Others)**

11 15. Respondent's license is subject to discipline under Code section 2762,
12 subdivision (b), in that Respondent used alcohol to an extent dangerous to herself and others as
13 set forth in paragraph 14 above, which is incorporated here by this reference.

14 **THIRD CAUSE FOR DISCIPLINE**

15 **(Criminal Conviction Involving the Consumption of Alcohol)**

16 16. Respondent's license is subject to discipline under Code section 2762,
17 subdivision (c), in that Respondent was convicted of a criminal offense involving the
18 consumption of alcohol as set forth in paragraph 14 above, which is incorporated here by this
19 reference.

20 **PRAYER**

21 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,
22 and that following the hearing, the Board of Registered Nursing issue a decision:

23 1. Revoking or suspending Registered Nurse License Number 635144, issued to
24 Kimberly Renee Zepeda;

25 2. Ordering Kimberly Renee Zepeda to pay the Board of Registered Nursing the
26 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
27 Professions Code section 125.3;

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1 3. Taking such other and further action as deemed necessary and proper.

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3 DATED: 3/18/10

Louise R. Bailey
LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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